

**Office of Chief Counsel
Internal Revenue Service**

memorandum

CC:WR:SCA:LN:GL-805299-00

WBDouglass

date: AUG 11 2000

to: Chief, Appeals Division, Southern California District,
Attention: Steve Millang, Appeals Officer, Riverside

from: Southern California District Counsel CC:WR:SCA:LN
Willis B. Douglass, Attorney; Miriam A. Howe, ADC

subject: **Extension of Collection Statute of Limitations under RRA 98**
Taxpayer: [REDACTED] SSN [REDACTED]

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By transmittal dated June 12, 2000, you requested our advice as to the correct date for the expiration of the collection statute of limitations in a situation in which the statute had been extended prior to the effective date of the IRS Restructuring and Reform Act of 1998, P.L. 105-206 ("RRA 98"). This memorandum is in response to your request.

ISSUES

The issue is whether an extension of the collection statute of limitations which was entered into prior to December 31, [REDACTED], extends the statute of limitations to December 31, [REDACTED], or whether

RRA 98 will cause the extended statute of limitations to terminate on December 31, [REDACTED].

CONCLUSIONS

We believe that the transition rule, § 3461(c)(2)(C) of RRA 98, is applicable in this case. It provides that the original Form 900 waiver is still valid, since it was taken in connection with an installment agreement. Under the transition rule, the statute will expire on the 90th day after December 31, [REDACTED].

In addition, the running of the extended collection statute has been suspended since the date ([REDACTED]) on which the pendency of the taxpayer's in compromise began.

FACTS

A trust fund recovery penalty ("TFRP") was assessed against [REDACTED], the taxpayer, in [REDACTED]. In [REDACTED], the IRS and the taxpayer entered into an installment agreement with respect to this TFRP. In connection with this installment agreement, the taxpayer agreed to extend the statute of limitations on collection to [REDACTED]. The taxpayer commenced making payments under the installment agreement in [REDACTED]. Prior to December 31, [REDACTED], the taxpayer defaulted on the installment agreement. The installment agreement was not reinstated; it terminated prior to December 31, [REDACTED]. Later, the taxpayer filed an offer in compromise. On [REDACTED], the IRS agreed that the offer was processable. The Form 656 on which this offer in compromise was submitted provides that the statute of limitation on collections, I.R.C. § 6502, is suspended during the pendency of the offer and for one year thereafter. The offer in compromise is now pending before Appeals.

ANALYSIS

I.R.C. § 6502(a)(1) provides that the IRS has ten years in which to collect an unpaid assessment by levy or in which to commence an action in court to collect the assessment. The ten-year period begins to run as of the assessment date.

Former I.R.C. § 6502(a)(2) provided that the taxpayer and the IRS could agree in writing to extend the ten-year period provided by I.R.C. § 6502(a)(1). This subsection was amended by RRA 98 to prohibit voluntary extensions of the statute of limitations on collection, including the voluntary waiver and suspension contained in the Form 656 discussed above, except in cases in which the taxpayer and the IRS have entered into an installment agreement. This amendment is effective for extensions entered into after

December 31, 1999. For open-statute extensions entered into before December 31, 1999, § 3461(c)(2) of RRA 98 provides a transition rule which states as follows:

(2) Prior Request--If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend such period beyond the ten-year period referenced in section 6502(a) of the Internal Revenue Code of 1986, such extension shall expire on the latest of--

- (A) the last day of such 10-year period;
- (B) December 31, 2002; or
- (C) in the case of an extension in connection with [emphasis added] an installment agreement, the 90th day after the end of the period of such extension.

The literal language of § 3461(c)(2)(C) of RRA 98 refers to extensions taken "in connection with" an installment agreement, and it says nothing about what happens if the installment agreement defaults or is terminated prior to the end of the extension period.

The National Office, at its website <http://www.hq.irs.gov/programs/NRC/q-and-a.htm>, has provided the following Q & A, which addresses this issue:

Question 669:

The taxpayer's installment agreement is prior to RRA 98 and includes a waiver of the statute of limitations to [REDACTED]. If the agreement defaults, can we request a new waiver as a condition of a new installment agreement?

Answer 669:

We may not request a new waiver as a condition of a new installment agreement. It is the Service's current policy to extend the statutory period once, for a period of up to five years, in conjunction with an installment agreement. Default of the agreement does not create an opportunity to secure another waiver.

The taxpayer's previous agreement to extend the statute of limitations to [REDACTED] remains in effect however, because:

It was secured in conjunction with an installment agreement; and

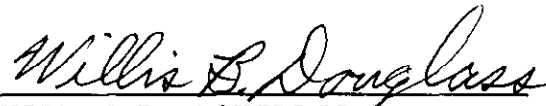
It was executed prior to the current policy of securing maximum extensions of five years, i.e. in accordance with then current policies and procedures.

If the agreement for which the waiver was secured defaults, then the taxpayer may enter into a new agreement. The new agreement must fully pay the aggregate tax liability (including statutory additions). If a proposed new agreement will not fully pay the liability, then other options, such as an offer in compromise, should be explored.

From this Q & A, we conclude that the since the original Form 900 collection waiver extended the statute to December 31, [REDACTED], the collection statute will expire on the 90th day after December 31, [REDACTED], since the Form 900 waiver was obtained in connection with an installment agreement.

As noted above, the former practice of including a voluntary waiver and suspension of the collection statute in Forms 656 has been prohibited as of December 31, 1999, by the revision of I.R.C. § 6502. However, new I.R.C. § 6331(k), added by RRA 98 and effective for offers in compromise pending on or made after December 31, 1999, provides that no levies may be made while an offer in compromise is pending. It also provides that a rule similar to that set forth in I.R.C. § 6331(i)(5) shall apply for purposes of subsection (k). I.R.C. § 6331(i)(5) provides that the limitations period under I.R.C. § 6502 is suspended for the period during which levies are prohibited. Therefore, we conclude that the running of the collection statute was suspended as of the date ([REDACTED]) on which the pendency of the offer in compromise began.

Since nothing further remains to be done on this case, we are closing our file. If you have any questions, please contact the undersigned at (949) 360-2691.


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